ANALYSIS OF EXISTING RIT FUNDING STRUCTURE

Prepared for the

Legislative Finance Committee

by

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PURPOSE

Resource Indemnity Trust (RIT) funds are a major funding source for several natural resource programs. In addition to the $5 million appropriated for the grants programs, approximately $19.5 million of RIT funds are appropriated for various other state functions during the current biennium.

Current on-going uses of the fund exceed on-going revenues. During the last session the legislature faced significant shortages of RIT funds in two state special revenue accounts: 1) the renewable resource grant and loan (RRGL) account; and 2) the reclamation and development grants (RDG) account. These two accounts receive money from other sources of revenue, but are primarily funded with RIT interest earnings and Resource Indemnity and Ground Water Assessment (RIGWA) tax proceeds. In the 1997 biennium, the Hazardous Waste/CERCLA (HW/CERCLA) account is anticipated to eliminate a current fund balance, the consequence of which could be a shortfall in that account in the 1999 biennium. This report will show the causes of this shortfall and that a similar situation will likely face future legislatures. The main purpose of this report is to assist the legislature in simplifying RIT allocations to allow enhanced prioritization.

LEGISLATIVE HISTORY OF THE RIT

This section of the report provides a brief history of legislative action that has impacted the RIT and the uses of RIT interest earnings. A more detailed list of changes going back to the 1983 session is provided in Attachment A. This section is provided to give the committee an understanding of how the uses of RIT funds have evolved.

Legislative History

The 1973 legislature created the RIT with the passage of the Montana Resource Indemnity Trust Act. A 1974 amendment to the Montana Constitution added the following language concerning the RIT (Article IX, Section 2, Subparts 2 and 3):

> (2) The Legislature shall provide a fund, to be known as the resource indemnity trust of the state of Montana, to be funded by such taxes on the extraction of natural resources as the legislature may from time to time impose for that purpose.
>
> (3) The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars ($100,000,000), guaranteed by the state against loss or diversion.

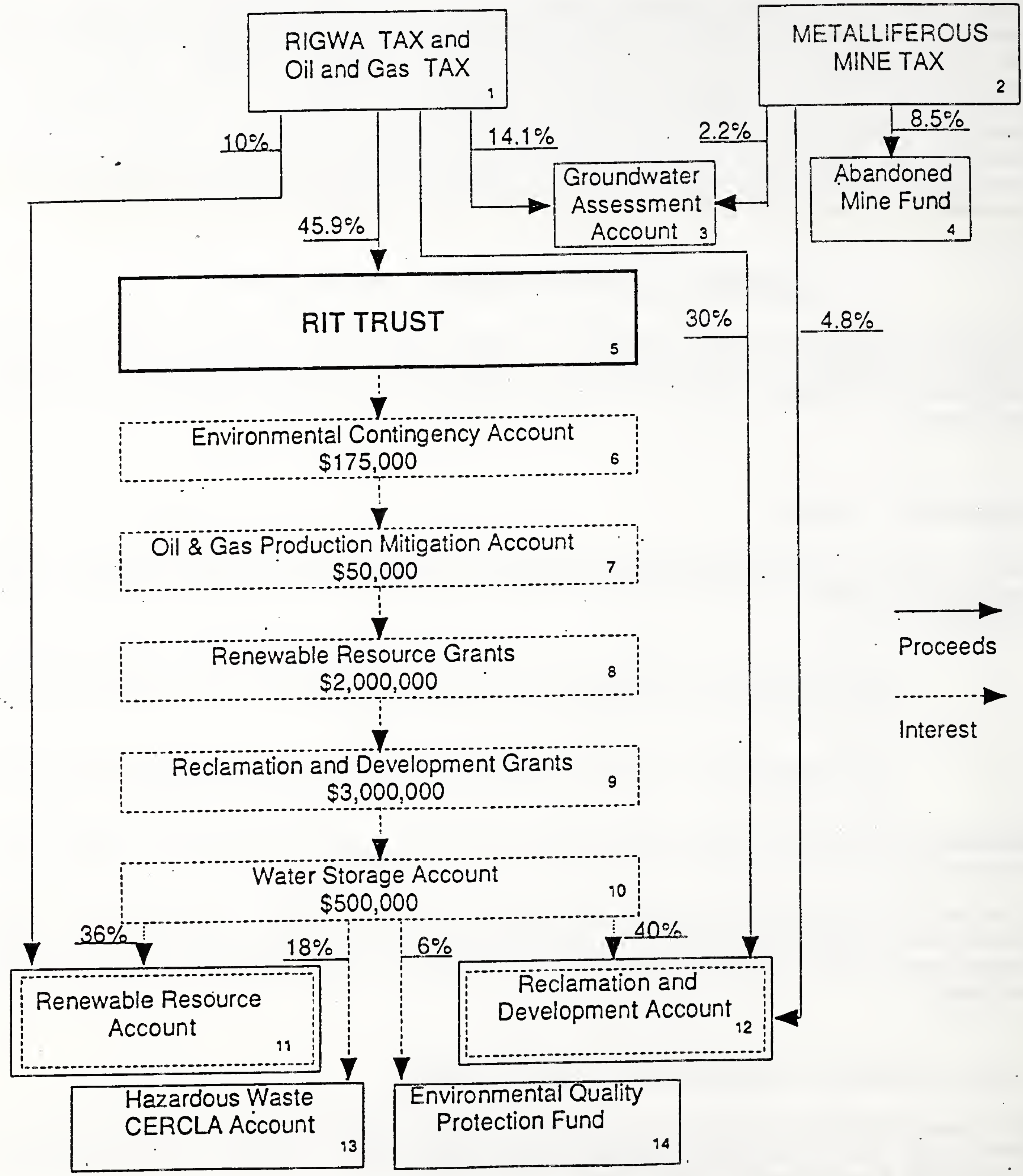
Essentially, the Constitution requires the existence of the RIT, permits the legislature to impose natural resource extraction taxes to fund the RIT, and restricts the usage of the first $100 million of RIT principle.

In addition to the constitutional restriction on using RIT principle, the RIT Act prohibited the use of RIT interest until the RIT balance topped $10 million. This balance was reached in 1978. However, interest earnings were not used until the early 1980's and then primarily for specific natural resource related studies and projects.

Uses of Interest and RIGWA Tax Proceeds

RIT interest and RIGWA tax revenues are currently allocated to eight (8) state special revenue accounts and the RIT itself. The flowchart on the following page shows this allocation. As this flowchart shows, allocation of both RIGWA tax proceeds and RIT interest is very complex.

ALLOCATION OF RIT PROCEEDS AND INTEREST



Use of the funds is also complex and varied. The number of accounts receiving these revenues, and the state agency programs funded, are shown in Table 2. Statutes establish several uses for which dollar limitations are made, including the Groundwater Assessment Account (which receives a maximum of $1.332 million of RIGWA tax proceeds over the biennium), and the Environmental Contingency Account ($175,000), the Oil and Gas Production Mitigation Account ($50,000), Renewable Resource Grants ($2.0 million), Reclamation and Development Grants ($3.0 million), and the Water Storage Account ($0.5 million), which receive interest from the RIT trust. The remaining functions, which are shown on the table under "Appropriations", have no set dollar limitation and generally fall into the category of state agency operations.

RIT FUNDING

Prior to the 1995 biennium, the RIT was funded with all of the RIT tax (renamed the RIGWA tax) proceeds and 15.5 percent of metal mines tax proceeds. Several bills have been passed during recent sessions diverting these proceeds for other purposes. Currently, the only sources of funds being deposited in the RIT are 45.9 percent of the total RIGWA tax proceeds and a percentage of the oil and gas production tax proceeds (which replaced RIGWA taxes as part of a consolidation of oil and gas production taxes).

Historically, RIT interest has been used in increasing amounts to replace general fund for natural resource agencies. However, over $4.3 million of general fund was used during the 1995 session to replace RIT sources in natural resource related programs due to an imbalance between available revenues and appropriations to programs funded with RIT. The legislature also cancelled grants to provide an additional $239,000 of RIT funds for agency operations. Without these actions appropriations would have significantly exceeded available RIT funds.

TABLE 2
RIGWAT AND OIL AND GAS TAX PROCEEDS, RIT TRUST INTEREST EARNINGS, AND EXPENDITURES

RIGWAT PROCEEDS PROJECTIONS	Total RIGWAT and Oil & Gas Tax Proceeds	RIGWAT and Oil & Gas Tax Proceeds to Trust	Metal Mine Tax Proceeds to Trust	Total Deposits to RIT Trust	Forecast Trust Balance
FY 95	$2,979,674	1,665,638	$684,280	2,349,918	$91,663,530
FY 96	3,777,004	1,732,821		1,732,821	93,396,350
FY 97	3,063,203	1,405,863		1,405,863	94,802,214

RIT TRUST INTEREST EARNINGS PROJECTIONS *	FY96	FY97	TOTAL
	7,683,976	7,698,682	15,382,658

TOTAL 1997 BIENNIUM ALLOCATION OF RIT INTEREST EARNINGS		$15,382,658
Environmental Contingency Account	$175,000	
Oil & Gas Production Damage Mitigation Account	50,000	
Renewable Resource Grant & Loan Program	2,000,000	
Reclamation & Development Grants	3,000,000	
Water Storage Account	500,000	
TOTAL BIENNIAL APPROPRIATIONS		$5,725,000
AMOUNT AVAILABLE FOR FURTHER DISTRIBUTION		$9,657,658

Distribution of Remaining Interest Earnings

Account	Renewable Resource	Reclamation & Development	Hazardous Waste/ CERCLA	Environmental Quality Protection	TOTAL
Percent Distribution of RIT Interest	36%	40%	18%	6%	100%
Beginning Balance	$673,742	$0	$968,414	$1,300,000	$2,942,156
Revenues					
RIT Interest	$3,476,757	$3,863,063	$1,738,378	$579,459	$9,657,658
RIGWAT and Oil & Gas Tax Proceeds	684,121	2,052,362			$2,736,483
Grants not Funded	239,000				239,000
Metal Mines Tax Proceeds		525,160			525,160
Debt Service Sweep (04011 and 04008)	919,444				919,444
RRD Loan Repayments	238,900				238,900
Interest (STIP)			80,000		80,000
Cost Recoveries				688,816	688,816
Administrative Fees	10,000				10,000
State Owned Project Revenue	919,290				919,290
Total Funds Available	$7,161,254	$6,440,585	$2,786,792	$2,568,275	$18,956,907
Appropriations					
Montana State University, Northern (Statutory)	480,000				480,000
DNRC Centralized Services Division	633,043	154,001			787,044
DNRC (DSL prior to SB 234) Central Management		78,085			78,085
DNRC Conservation and Resource Development	1,288,981	976,958			2,265,939
DNRC Water Resources Division	1,048,611	1,997,129			3,045,740
DNRC Reserved Water Rights Compact Commission	34,742	534,199			568,941
DNRC State Water Projects	2,190,000				2,190,000
DEQ (DSL prior to SB 234) Reclamation Division		1,835,507			1,835,507
DEQ (DHES prior to SB 234) Air Quality Division Radon		50,000			50,000
DEQ (DHES prior to SB 234) Remediation Division			236,971	1,976,174	2,213,145
DEQ (DHES prior to SB 234) Water Quality Division			1,393,165		1,393,165
DEQ (DHES prior to SB 234) Waste Management Division			1,164,575		1,164,575
Governor's Office -- Flathead Basin Commission	80,082				80,082
Water Court	1,038,389				1,038,389
State Library	322,007	285,036			607,043
Environmental Quality Council		28,083			28,083
Pay Plan	67,488	223,083	39,587	7,556	337,714
Total Appropriations	$7,183,343	$6,162,081	$2,834,298	$1,983,730	$18,163,452
Projected Biennium Ending Balance	($22,089)	$278,504	($47,506)	$584,545	

* INTEREST IMPACTS DUE TO QUARTERLY COLLECTIONS OF OIL AND GAS TAX PROCEEDS ARE NOT FULLY REFLECTED. QUARTERLY COMPOUNDING OF INTEREST WILL CAUSE SLIGHTLY HIGHER EARNINGS PROJECTIONS THAN THOSE LISTED, BUT THE INCREASE IS NOT CONSIDERED TO BE SIGNIFICANT.

Reasons for the Shortage of RIT Funds

The shortage of RIT funds experienced during the 1995 session is likely to be a recurring rather than one-time situation. This is because RIT funds are essentially a limited source of revenues that have been used to fund a growing number of programs.

Programs Funded

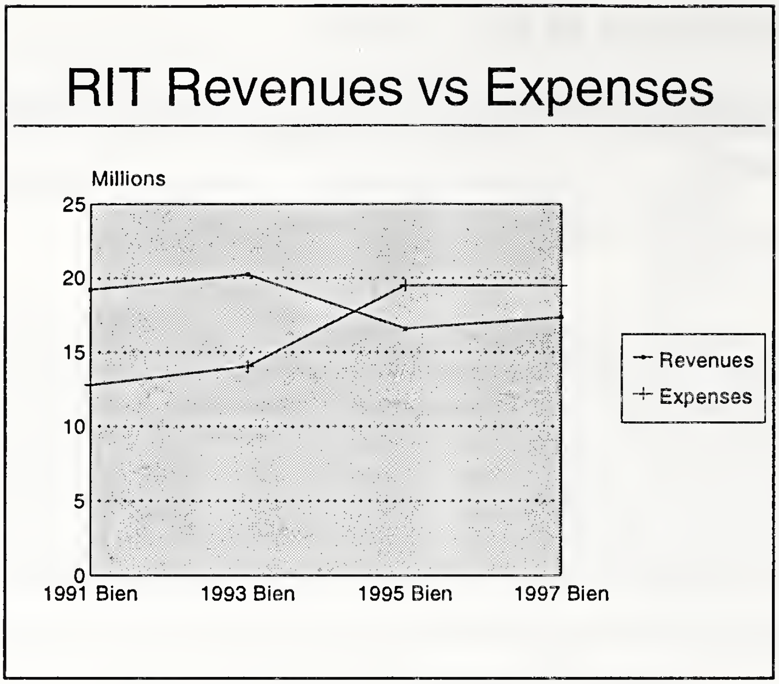
The uses of RIT funds have expanded significantly through the years. There are now 15 programs that use RIT funds to support ongoing, continuous functions, while only eight programs used RIT funds in this manner 10 years ago. RIT interest was used to replace general fund in natural resource agencies during the 1985, 1987, 1991, and the 1993 sessions. Also, RIT funds have been used for new programs or expansion of existing programs during almost every session. Currently, RIT funds are used for programs in: 1) the Department of Natural Resources and Conservation; 2) the Department of Environmental Quality; 3) MSU-Northern; 4) the Bureau of Mines; 5) the Governor's Office; 6) the Water Courts; 7) the State Library; and 8) the Environmental Quality Council. The following table lists these programs.

Current Programs with RIT Funding

DNRC	DEQ
Centralized Services	Reclamation
Conservation & Resource Development	Air Quality
Water Resources	Remediation
Reserved Water Rights Compact Commission	Water Quality
	Waste Management

Other Agencies
MSU-Northern Water Course
Bureau of Mines Groundwater Assessment
Environmental Quality Council
State Library Natural Resource Information System
Water Court
Governor's Flathead Basin Commission

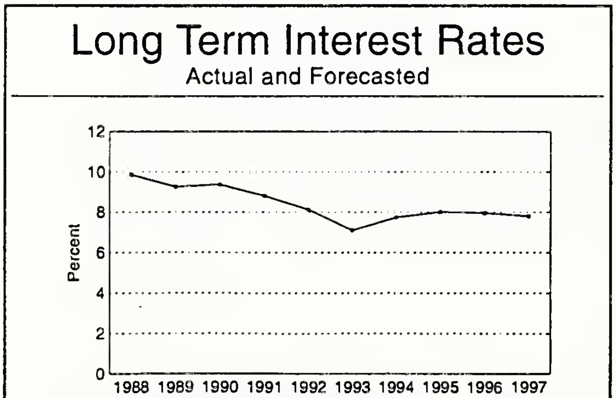
Revenues deposited to the various RIT accounts to support ongoing functions have not kept up with expenses. The following table shows this relationship. As shown, while expenditures show an increase, revenues declined in the 1995 biennium.



The major change occurs between the 1993 and 1995 biennia primarily because: 1) RIT grant programs were set at specified amounts in order to ensure a minimum level, with other programs receiving the remainder. In prior biennia, ongoing programs were funded first, with the remainder going to grant projects; 2) RIT interest earnings and RIGWA proceeds were lower than projections; and 3) a significant increase in the use of RIT funds was made to replace general fund, maintaining these programs at higher levels.

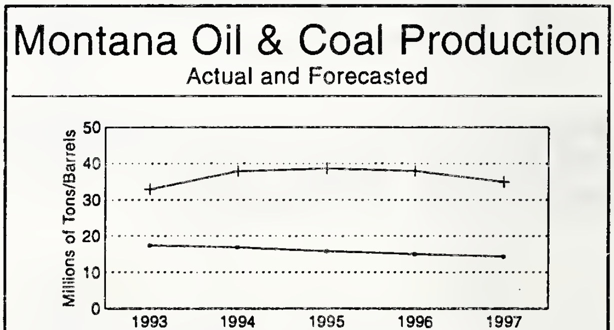
Revenue Generation

The accounts that receive RIT funds are highly dependent on RIT interest earnings, as well as coal and oil production, which are all at low levels compared to prior periods. The next two tables show the recent trends in long term interest rates and coal and oil production. Based on these trends, RIT revenues are not expected to grow very quickly.



	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Int. Rate	9.87	9.27	9.38	8.82	8.13	7.11	7.75	8.02	7.96	7.81

Source: Legislative Fiscal Report



	1993	1994	1995	1996	1997
Oil	17.396	16.825	15.78	15.016	14.313
Coal	32.911	37.92	38.657	37.964	34.955

Oil Coal

Forecasts are ROC

As a general rule RIT interest earnings can grow by earning higher interest rates or by increasing the RIT balance on which interest is earned. However, increased interest earnings will not provide long term growth in RIT revenues. First, interest rates will not rise perpetually. Second, the RIT balance will grow slowly because a significant portion of the proceeds that were historically deposited in the RIT have been diverted for other purposes and that potential growth will end when the RIT balance reaches $100 million. As of the end of fiscal year 1995, the RIT principal balance is at $91.6 million.

Current statutes require that all RIT deposits be appropriated and spent once the balance reaches $100 million. This is expected to occur in the year 2000 or slightly thereafter, so eventually all future deposits will be able to be used directly to fund programs. However, interest revenues will essentially be capped once all proceeds are being spent. RIGWA proceeds are heavily dependent on coal and oil production, which would have to grow at consistent levels to provide long term growth in available RIT funds. There is no indication that such consistent growth will occur.

In summary, it appears that RIT shortages are likely to continue due to a structural imbalance in revenue growth versus program expenditure growth. Future RIT interest will fluxuate around a fixed amount once the $100 million cap is achieved, while RIGWA tax proceeds will be dependent on the amount of production and prices of mineral production (primarily coal and oil). Conversely, expenses have a natural tendency to increase due to inflation and wage increases. Another factor indicating that the RIT funding shortage will again occur is that the beginning balances in the major RIT accounts are being relied on as a source of funds during this biennium. However, beginning balances in these accounts for the next biennium will be virtually nonexistent if revenue projections are accurate and total current appropriations are spent. These conditions are likely to continue unless the legislature reduces the uses of RIT funds.

PRIORITIZING FUNDING AND SIMPLIFYING FUND ALLOCATION

As illustrated, increasing demands on RIT accounts have overextended the fund revenues. The greatest expenditure of these funds occurs in on-going operations of state government. For the legislature to meet the challenge of reduced RIT funding and to prioritize funding, it must re-examine the current uses of the fund. As stated earlier, use of the fund is complex for two reasons: 1) the number of accounts receiving direct proceeds and interest income, and 2) the number of programs receiving funding from each of the accounts. The legislature may, therefore, wish to consider whether and how it may fund a limited number of programs from a reduced number of allocations. These issues may be examined either independently or in concert.

Reducing the Number of Allocations

There are two ways to reduce allocations: 1) reduce the number of accounts used; and 2) reduce the number of allocations of proceeds.

Reducing the Number of Accounts

The first issue examined is how the number of accounts, and therefore allocations, may be reduced. The legislature can explore this issue whether or not any other action to reduce the number of programs directly funded with the RIT is taken.

The legislature has established eight accounts to receive RIT interest and tax proceeds. Generally, when the legislature statutorily establishes these accounts, among the things it attempts to ensure are that the funds are

used for legislative purposes and priorities, and that these purposes are maintained over time to provide some stability of both purpose and funding.

Four accounts are used to fund on-going agency operations. These accounts could be combined into two accounts: 1) the RRGL and RDG accounts; and 2) the HW/CERCLA account and the Environmental Quality Protection Fund (EQPF).

RRGL and RDG

These accounts are used for a number of different agency operations. While the legislature appears to have established these accounts for specific purposes, a clear delineation between functions funded in each account has not been maintained, and the legislature has essentially treated the two accounts as one by using them interchangeably. In addition, recent funding decisions regarding the accounts appear to have been based more upon the availability of revenues than on the purpose for which the accounts were used. Both accounts experienced funding shortages in the 1997 biennium, and general fund was added wherever it was deemed to be necessary. (Because statute currently allocates a portion of the revenues in these accounts for specific types of grant and loan projects, this distinction would not be impacted by combining the accounts.)

In addition, as discussed in "Other Issues" at the end of this report, statutory language sets permissive guidelines for the use of the funds, rather than restricting their use. Therefore, statutes do not currently provide a barrier to a combined account.

HW/CERCLA and EQPF

The HW/CERCLA account provides funding for hazardous waste, underground storage tank, and superfund activities. The EQPF is used to meet environmental emergencies and to fund the state's superfund program. All of these activities are in the Department of Environmental Quality (DEQ). The legislature may wish to consider whether allocations for the state superfund program and for environmental emergencies require a separate account to protect funding for these projects, or whether that prioritization can be made if the accounts were combined.

Reduce Allocations of Proceeds

As the flowchart on page 2 shows, RIGWA tax proceeds are allocated in three ways: 1) 14.1 percent to the Groundwater Assessment Account; 2) 45.9 percent to the RIT trust; and 3) two allocations to accounts from which general state agency operations are funded: a) 10 percent to the RRGL and 30 percent to the RDG.

The legislature may wish to consider whether it wishes to continue to allocate proceeds to fund general agency operations. Proceeds were reallocated in the 1995 biennium, when general fund was replaced in a number of agency operations. Proceeds deposited directly to the RRGL and RDG in the 1997 biennium are estimated to total $2.7 million. If these proceeds were no longer allocated to the accounts, the legislature could either reprioritize funding or deposit the revenues to the RIT trust. This action would cause the fund balance to reach $100 million before the year 2000, at which time the proceeds must be spent under current law.

Reducing the Number of Programs Funded Directly with RIT

Because these programs receive funding directly from the RIT accounts, the RIT acts as an earmarked account. Earmarked accounts are those for which specific funding sources are set aside to fund specific functions.

Statute establishes a number of criteria for examining the appropriateness of earmarking revenue sources. Among these criteria are (paraphrased):

1) Are the funded programs closely linked to the funding source in purpose and design (is there a benefit to the parties providing the revenue)?

2) Is there a clear link between the funding source and the levels of funding required to perform the related function?

If the answer to either or both of these questions is no, it may be appropriate to question whether the programs funded should have an earmarked funding source. If a link between the funding source (or the statutory authorization or purpose for the funding source) and the functions funded is not made, it can be argued that those functions should compete for funds with other general operations of state government. If the funding source is not sufficient to fund the functions and must be subsidized with other funding sources, it can be argued that one of the primary purposes in earmarking has been lost.

Are the Programs Linked in Purpose/Design

In examining the first question as it relates to RIT funding, two questions can be asked:

1) was the function funded in response to the statute; and/or

2) is the program directly related to the purpose of the statute?

Response to Statute

An examination of the current programs does not indicate that any of the programs were created as a result of passage of the RIT statutes. As detailed in Appendix A, funding for each of the agency operations programs have been added over the previous seven biennia. Therefore, this criteria alone would not establish a direct link between the programs and the establishment of the RIT statutes.

Purpose of Statute

Traditionally, RIT/RIGWA funds have been used for natural resource related programs and projects only. However, a late 1980's Supreme Court decision indicates that these funds could be used to support a much broader group of functions because: 1) the Constitution provides no limits on the uses of RIT interest, or on RIT deposits once the balance exceeds $100 million; and 2) the use of RIT interest for agency operations does not violate statute requiring that appropriations from the resource indemnity trust interest account (which no longer exists) not be made for general operations of state agencies (Section 15-38-203(2), MCA) if the funds are used for programs related to improving the "total environment" or rectifying damage thereto.

The term "total environment" is defined in Section 15-38-103(4) to mean:

> air, water, soil, flora, and fauna and the social, economic, and cultural conditions that influence communities and individual citizens.

It could be argued logically that every program in state government meets these "total environment" conditions, because all state programs are supposed to improve, protect or make better (rectify) natural resources, or social, economic, and cultural conditions. As a consequence, it cannot be clearly established that any of the current uses do not meet this criteria. Therefore, if the legislature wishes to use this criteria, it must examine these programs to determine degrees of linkage with a determination of priorities for use of the funds.

In summary, none of the programs can claim a direct link with the establishment of the RIT statute, although none appear to be outside of the statutory restrictions on the fund's use. By the same token, lack of a clear link with the establishment of the statute means that the legislature's primary obstacle to changing the funding of many of these programs lies in disruption of funding source and the necessity of replacement, rather than in a statutory imperative that RIT fund the function.

Clear Link with Funding Source Levels

If earmarked revenue accounts are not sufficient to cover all expenses of an account, the legislature can either reduce program expenditures or increase revenues to the account. In the 1997 biennium, the legislature chose to subsidize those accounts experiencing a shortage of funds with general fund. If general revenues are used to subsidize, the necessity of maintaining specific earmarked funding sources is called into question. For example, the school equalization account was de-earmarked in the 1995 legislative session, in part because funds specifically earmarked for that purpose were not sufficient to fund the state's statutory obligations.

POTENTIAL CRITERIA FOR REDUCING EARMARKING

Given the tenuous link between these programs and basic criteria for providing an earmarked funding source, the legislature may wish to question whether certain of these programs need be funded with RIT accounts. Reducing the programs directly funded with RIT would simplify allocations of these revenues, and allow for enhanced examination of programs for prioritization. There are two ways to examine this issue: 1) reducing the programs funded so that the tax is used for a more tightly defined purpose; and for 2) de-earmarking some portion of the RIT fund to the general fund.

The question of what programs might no longer be funded directly with RIT funds is, as shown earlier, not a straightforward issue due to the nature of the RIT statutes. Therefore, the first question is: upon what basis should this examination be made? Two options are briefly discussed below: 1) general agency operating costs; and 2) duties directly related to rectification of environmental damage.

These options are discussed in the context of appropriations made directly to state agencies for which no set dollar limitation is made in statute. Allocations not addressed, therefore, include the Environmental Contingency Account, the Oil and Gas Production Damage Mitigation Account, the Renewable Resource Grant and Loan Program, Reclamation and Development Grants, the Water Storage Account, and the Groundwater Assessment Account.

Operating Costs

Agencies expend RIT interest and RIGWA proceeds for a number of activities, as discussed in Appendix B. The legislature may wish to examine whether it wishes to continue to appropriate these funds for various operating expenses of state agencies. These expenses include all direct legislative appropriations to the agencies included in the "Appropriations" section of Table 1. If this option were adopted, 40 percent of RIGWA tax proceeds ($2.7 million in the 1997 biennium) as well as all interest income once statutory set dollar amount allocations were made ($9.7 million in the 1997 biennium) would either be reallocated or deposited to the general fund, requiring a like addition of other funds to those impacted programs.

(If all operating expenses were de-earmarked, that portion of operating expenses used to administer RIT funded grants and loans would no longer be funded from a like funding source.)

Rectification Activities

The legislature may wish to restrict use of the RIT interest and RIGWA proceeds revenue to those activities directly related to the rectification of environmental damage. This option would not include funding for any programs designed to monitor or prevent environmental damage. Within state agency operations, those activities that appear to most directly relate to rectification of damage to the environment occur within DEQ in the Remediation and Waste Management Divisions. Among the activities in this division are all funds for federal Superfund match and state superfund activities, as well as programs such as the leaking underground storage tank program. Appropriations for these remediation programs (not including pay plan) total $3.38 million in the 1997 biennium. Under this scenario, the EQPF would continue to receive 6 percent of remaining interest income ($2.0 million in the 1997 biennium). Under current revenue projections, activities remaining in the Hazardous Waste/CERCLA account would total about 14.5 percent of interest earnings remaining after statutory allocations, rather than the 18 percent currently statutorily allocated. Consequently, with the exception of these allocations, all interest income remaining after statutory allocations of a set dollar amount are made, as well as 40 percent of total RIGWA proceeds, would either be reallocated or deposited to the general fund.

ISSUES AND OPTIONS

Issue 1: Does the legislature wish to combine any of the current RIT accounts?

Option 1: Combine the RRGL and RDG accounts, and the HW/CERCLA and Environmental Contingency accounts. This option would require the introduction of legislation to the 1997 legislature.

Option 2: Combine only the RRGL and RDG accounts.

Option 3: Take no action.

Issue 2: Does the legislature wish to cease using RIT funding for any or all on-going operations of state government? This cessation could take the form of either a reallocation of certain interest and proceeds, or de-earmarking some portion of the RIGWA tax or RIT trust interest proceeds. Should the committee wish to explore either Option 1 or Option 2 further, a follow-up report will be presented at the June, 1996 meeting of the LFC, in part because of the significant issues each entails

Option 1: Eliminate RIT funding for or de-earmark a portion of the RIGWA tax proceeds RIT trust interest income used to fund agency operations, maintaining direct RIT trust interest funding of grant and loan programs, the water storage account, and the environmental contingency and oil and gas production mitigation accounts. This option would necessitate replacement of funding in those programs, with an increase in general fund revenues of a like amount.

Option 2: Eliminate RIT funding for or de-earmark a portion of RIT trust interest and RIGWA proceeds in the RRGL, RDG, and Hazardous Waste/CERCLA accounts used for general agency operations, maintaining earmarking for those programs used for direct remediation and waste management activities in DEQ.

Option 3: Refer this issue to the SB 378 committee for further study and recommendation.

Option 4: Take no action.

OTHER ISSUES

Several statutory errors and conflicting statutes were discovered during the study. These problems and several options to correct them are discussed below:

(15-37-117, MCA)

Metal Mines license tax proceeds totalling 107 percent are allocated in fiscal years 1997 and beyond. The Legislative Services Division plans to correct this error in the code commissioner bill for the 1997 session.

(15-38-201 and 15-38-202, MCA)

a) These statutes define the RIT and allocate RIGWA proceeds. One statute defines the RIT as a nonexpendable trust fund, while the other requires that once the RIT balance reaches $100 million, all proceeds deposited to the trust must be appropriated and expended as long as the balance does not drop below $100 million. These statutes are in conflict because the first one prohibits the spending of funds deposited in the RIT while the other requires it. Two options are offered:

Option 1: Change the definition of the RIT from a nonexpendable trust fund to an expendable trust fund. The Constitution guarantees that RIT principle may only be spent if the balance is equal to or greater than $100 million.

Option 2: Change statute so that proceeds are diverted to another account once the RIT balance is equal to $100 million.

b) Included in 15-38-202, MCA, is a reference to the resource indemnity trust interest account, a state special revenue account that no longer exists. RIT interest has been 100 percent allocated to various accounts for various purposes since fiscal year 1990. Prior to that time, a portion of the RIT interest was not allocated for specific purposes and was deposited in the resource indemnity trust interest account. Because the account was inactive it was abolished. However part (3) of this statute still references the resource indemnity trust interest account.

Option: Change statute so that it no longer refers to a nonexistent account.

(75-1-1101, MCA)

This statute defines the environmental contingency account. Interest from this account is currently being deposited in the general fund. Part (4) requires interest earned on this account to be deposited in the nonexistent resource indemnity trust interest account, which was abolished more than five years ago.

Option: Change the statute so that interest is no longer required to be deposited to a nonexistent account.

(85-2-905, MCA)

a) This statute requires that federal funds be deposited in the groundwater assessment (GWA) account. This is in conflict with 17-2-102, MCA that requires all federal funds to be deposited in federal special revenue accounts.

Option: Remove the language requiring federal funds to be deposited in the GWA account.

b) This statute fails to mention that a portion of oil and gas production tax proceeds must be deposited in the GWA account, as SB 412 from the 1995 session removed RIGWA taxes from oil and gas production and replaced it with a portion of oil and gas production taxes.

Option: Include language in this statute stating that oil and gas production taxes must be deposited pursuant to 15-36-324 and 15-38-106, MCA.

(85-1-604 and 90-2-1104, MCA)

a) These statutes define both the renewable resource grant and loan account and the resource development grants account and require the deposit of RIT tax proceeds in each.

Option: These statutes should be corrected to require the deposit of RIGWA tax proceeds rather than RIT tax proceeds, since the name of the tax was changed by HB 608 during the 1993 session.

b) These statutes fail to mention that a portion of oil and gas production tax proceeds must be deposited in the two accounts, as SB 412 from the 1995 session removed RIGWA taxes from oil and gas production and replaced it with a portion of oil and gas production taxes.

Option: Include language in these statutes stating that oil and gas production taxes must be deposited pursuant to 15-36-324 and 15-38-106, MCA.

c) Similar language appears in both statutes about how the accounts may be used: "Appropriations may be made from (the account) for the following purposes ...". This language was apparently included to restrict how these funds could be used, but because the word "only" does not appear, no restriction actually exists on how the funds can be used (other than to "improve the total environment and rectify damage thereto").

Option 1: Change language in these statutes to be restrictive if the legislature wants the uses of these accounts restricted.

Option 2: Remove the current language that is not restrictive if the legislature does not intend to restrict the uses of these accounts in order to clarify that intent.

Option 3: Make no changes.

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Attachment A

1983 Session for the 1985 Biennium

$1 million of RIT interest replaces general fund in Water Resources Division (Water) for operating costs.

$.6 million of water development funds (RIT interest) replaces general fund in Water Engineering Bureau.

Language in HB 447 directs that future appropriations from the RIT interest account should not be made for general operating costs of state agencies.

> In a 1989 decision the Supreme Court ruled that this provision does not apply if the funds were used for operation of programs related to improving the total environment or rectifying damage thereto.

1985 Session for the 1987 Biennium

RIT interest account appropriations for DNRC agency operating costs drops to $1.2 million from $3.6 million in the 1985 biennium.

Environmental Contingency account established per HB 922 to receive 5% of RIT interest.

DHES allocated 6% of RIT interest for hazardous waste and superfund.

Environmental protection fund created per HB 766 but no RIT funds are allocated.

HB 922 appropriates $800,000 of RIT interest to Hazardous & Solid Waste Bureau for a central hazardous waste collection and transfer station - one-time-only (this appropriation was not used). HB 922 also appropriated $15,000 to Air Quality Bureau for monitoring Scobey air quality - one-time-only.

Environmental Sciences administrative functions are appropriated $114,000 of RIT interest to replace federal funds unless such fed money becomes available.

$10,000 of RIT interest appropriated to Water Quality Bureau to study minimum flows necessary to meet water quality standards.

1985 Special Session for the 1987 Biennium

$0.4 million of water development funds replace general fund in Water Engineering Bureau - general fund no longer appropriated in bureau.

DNRC Water Division funding switch of $947,000 RIT interest for general fund:

- $169,000 from RIT grant admin funds;
- $200,000 from the Environmental Contingency Account;
- $353,000 from RIT interest projected ending fund balance;
- $125,000 from Water Development Account emergency grants authority.

Hazardous waste transfer station appropriation cut by $53,000 and appropriated that to DNRC to replace general fund.

Environmental Contingency Fund receives a set $175,000 rather than 5%.

<u>1987 Session for the 1989 Biennium</u>

$1.1 million of RIT interest appropriated to DOLI for Silicosis benefits - one-time-only.

$180,000 to Governor's office for Clark Fork River projects.

$3.8 million total for agency operations at DSL & DNRC.

$140,000 of RIT interest appropriated for grants administration.

HB 777 increases DHES allocation of RIT interest from 6% to 12% and defines the HW/CERCLA account in statute.

HB 777 also appropriates $200,000 of HW/CERCLA funds for civil penalties litigation.

<u>1989 Session for the 1991 Biennium</u>

HB 718 requires that 4% of RIT interest be directed to EQPF.

$0.5 million from the reclamation and development account appropriated to the Reserved Water Rights Compact Commission.

$836,000 from the water development account appropriated to the Water Court.

$100,000 from the water development aaccount appropriated for Clark Fork coordinator.

$160,000 from renewable resource account appropriated for genetic engineering - one-time-only.

$400,000 appropriated from HW/CERCLA for civil actions against ARCO and BN.

Water Quality Bureau programs are appropriated HW/CERCLA to replace general fund as follows:

- $157,000 for water quality management;

- $176,000 for water pollution control;
- $247,000 for safe drinking water.

1991 Regular and Special Sessions for the 1993 Biennium

Beginning with the 1995 biennium, SB 94 requires that RIT tax becomes the RIGWA tax with 14.1 percent of proceeds being deposited to the ground water assessment account.

Interest is allocated:

- $175,000 to the environmental contingency account;
- $ 50,000 to oil and gas damage mitigation account;

REMAINDER:

- 30% water development;
- 46% reclamation and development;
- 12% HW/CERCLA;
- 4% EQPF;
- 8% renewable resource;

1993 Session for the 1995 Biennium

SB 94 from the 1991 session (1993 biennium changes) now requires 14.1% of RIGWA tax proceeds to be deposited directly to the ground water assessment account.

HB 608 is passed:

- Grant programs get priority over agency operations in RIT interest allocations and the amounts are fixed with increases occurring in the next biennium;
- water development and renewable resource accts. combined;
- water storage account receives a fixed $500,000 rather than 25 percent of the renewable resource grant funds as was required by the 1991 legislature;
- NMC's water course is statutorily appropriated $240,000 from the renewable resource grant and loan account;
- 15% of RIGWA tax proceeds are required to be deposited directly to each of the renewable resource grant and loan account and the reclamation & development grants account.

Interest is now allocated:

- $ 175,000 to the environmental contingency account;
- $ 50,000 to the oil and gas damage mitigation account;
- $1,025,000 to the renewable resource grants program;
- $2,200,000 to the reclamation & development grants program;
- $250,000 to the water storage account

REMAINDER:

- 38.0% renewable resource grant and loan (RRGL) account;
- 41.5% reclamation and development grants (RDG) account;

- 15.0% HW/CERCLA;
- 5.5% EQPF;

$2.86 million of RIT funds are used to replace general fund in DNRC and DSL.

<u>1993 Special Session for the 1995 Biennium</u>

Several minor funding switches are made to replace general fund with RIT funds.

<u>1995 Session for the 1997 Biennium</u>

HB 608 from the previous session requires the following:

RIT Interest Allocations

- $ 175,000 to the environmental contingency account;
- $ 50,000 to oil and gas damage mitigation account;
- $2 million to the renewable resource grants program;
- $3 million to the reclamation & development grants program;
- $ 500,000 to the water storage account

REMAINDER:

- 36% RRGL;
- 40% RDG;
- 18% HW/CERCLA;
- 6% EQPF;

RIGWA tax proceeds

- 10% of RIGWA tax proceeds are required to be deposited directly to the RRGL account.
- 30% of RIGWA tax proceeds are required to be deposited directly to the RDG account.

HB 608 results in a reduction in deposits to the RIT of RIGWA tax proceeds - now 45.9%

Over $4.3 million of general fund is used to replace RIT funds due to a shortage of RIT interest and RIGWA tax proceeds.

SB 412 simplifies oil and gas taxes by changing the RIGWA tax on oil and gas to a oil and gas production tax (combined with other oil and gas O&G taxes). This was revenue neutral except for a one time revenue acceleration which alleviated an over appropriation of RRGL and RDG combined accounts.

SB 46 permanently requires a diversion of 2.2% of metal mines license tax proceeds from the RIT to the GWA.

SB 382 requires a 2 year diversion of 8.5% of metal mines license tax proceeds from the RIT

for a pilot program to cleanup 3 abandoned mines. This bill also requires a study of the merits of eliminating the joint and several liability provisions of the HW/CERCLA and EQPF statutes; as well as, examining funding options for a reimbursement program for voluntary cleanups. If the pilot program is not made permanent by the next legislature, the 8.5 percent will again be deposited in the RIT.

HB 569 permanently requires a diversion of 4.8% of metal mines license tax proceeds from the RIT to the RDG account.

The three bills (SB 46, SB 382, and HB 569) discussed above result in no metal mines license tax proceeds being deposited to the RIT during the 1997 biennium.

Attachment B

1. The **Resource Indemnity Ground Water Assessment Tax** (RIGWA) is a 0.5 percent tax of the gross value of the product of all mineral mining. The tax was originally created in 1973. Mineral production including coal, metals (gold, silver, copper, lead), talc, vermiculite, limestone and other "nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana" (15-38-103) are taxed. Senate Bill No. 412 revised the tax structure for oil and natural gas production in Montana by combining a number of different taxes into one tax. This single tax is then distributed to local and state agencies. One component was to remove the RIGWA tax on oil and natural gas and instead allocate 10.7 percent of the new combined tax in the same manor that the RIGWA tax is allocated (SB 412, Section 18). This change is intended to be "revenue neutral."

2. The **Metalliferous License Mine Tax** is a tax on "annual gross value of product" of all metal mine production or precious or semiprecious gem or stone production (15-37-101 et. seq.). The tax rate is 1.81 percent of the annual gross value over $250,000 for concentrate shipped to a smelter, mill, or reduction work (15-37-103, MCA). For gold silver or any platinum-group metal that is dore, bullion, or matte and that is shipped to a refinery, the tax rate is 1.6 percent of the annual gross value over $250,000 (15-37-103, MCA).

3. The **Ground Water Assessment Account** was created in 1991 (85-2-901 et. seq., MCA). The purpose of the account is to fund a statewide ground water assessment program that will monitor quantity and quality of the state's ground water. The program is staffed by the Bureau of Mines and Geology in Butte. An oversight committee reviews all expenditures, approves monitoring sites, prioritizes areas, coordinates information, and evaluates reports.

4. The **Abandoned Mine Fund** was created in 1995 (Senate Bill 382). The purpose of the fund is to "provide the funding to the department of (environmental quality) for the cleanup and reclamation of sites eligible for the pilot program" (SB 382, Section 19). SB 382 (Sections 14 through 20) established a "pilot remediation program" to operate in conjunction with the voluntary cleanup program created by this bill. These funds would be awarded to eligible reclamation projects and match applicant funds. The pilot program will "sunset" on June 20, 1997. The Department of Environmental Quality administers this program.

5. The **Resource Indemnity Tax Trust** (RIT Trust) was created in 1973. No funds that are deposited into the trust can be spent until the total deposits exceed $100 million. This protection is provided in Article IX, Section 2 of the Montana constitution. Trust fund proceeds are invested and the interest earnings are distributed to several natural resource programs.

6. The **Environmental Contingency Account** was created in 1985 (75-1-1101 et. seq., MCA). The Governor has the authority to approve expenditures from this account to meet unanticipated public needs. Specifically, the statute limits projects to the following objectives: (a) to support renewable resource development projects in communities that face an emergency or imminent need for the services or to prevent the failure of a project; (b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including natural disasters or fire; to respond to an emergency or imminent threat to persons, property, or the environment

caused by mineral development; and to fund the environmental quality protection fund. Each biennium $175,000 of the RIT trust interest earnings are allocated to this account. The balance in this account cannot exceed $750,000.

7. The **Oil and Gas Production Damage Mitigation Account** was created in 1989 (85-2-161, MCA). The Board of Oil and Gas Conservation may authorize the payment for the cost of properly plugging a well and either reclaiming and/or restoring a drill site or other drilling or producing areas damaged by oil and gas operations. The site must be abandoned and the responsible person either cannot be identified or refuses to correct the problem. Each biennium $50,000 of the RIT trust interest earnings are allocated to this account. The balance in this account cannot exceed $200,000.

8. **Renewable Resource Grants** receive $2 million in RIT trust interest earnings. The Renewable Resource Grant and Loan program was created in 1993 by combining the Renewable Resource Development program and the Water Development program. The purpose of the grant program is to fund projects that conserve, develop, manage, and preserve water and other renewable resources. The program provides preference to projects that support the state water plan. Projects include construction and rehabilitation of existing water supply systems and waste water systems, educational efforts, feasibility studies, development of water storage, enhancement of renewable resources including recreation, reduction and advancement of agricultural chemical use, and improvement of water use efficiency (85-1-602, MCA).

9. The **Reclamation Development Grants** Program was established in 1987. The purposes of the program are to: (a) repair, reclaim, and mitigate environmental damage to public resources from nonrenewable resource extraction; and (b) to develop and ensure the quality of public resources for the benefit of all Montanans (90-2-1101, MCA). Projects have ranged from plugging abandoned oil and gas wells, reclaiming mine sites, non-point source pollution control projects, researching new technologies for mine waste clean-up, conducting ground water studies to determine the extent of contamination, and cleaning up pesticide contamination. A minimum of $3 million of RIT trust interest earnings are allocated for these grants.

10. The **Water Storage Account** was established in 1991 (85-1-701 et. seq., MCA). The purpose of the account is to provide funding for projects that rehabilitate existing water storage facilities or develop new ones. Priority is given to high hazard, unsafe dams. Each biennium $500,000 of RIT trust interest earnings are deposited into this account. Currently, the only project to receive water storage account funding is the rehabilitation of the state owned dam on the Tongue River in eastern Montana.

11. The **Renewable Resource Grant and Loan Program** <u>state special revenue account</u> receives 36 percent of the remaining interest earnings from the RIT trust and 10 percent of the RIGWA tax proceeds. This special revenue account also receives revenue from state water projects, excess deposits in the renewable resource debt service account, and other administrative fees. The revenues are used to fund natural resource agency projects and administration including Department of Natural Resources and Conservation, Governor's Office, Water Court and the State Library.

12. The **Reclamation and Development Grant Program** <u>state special revenue account</u> receives 40 percent of the remaining RIT trust interest earnings, 30 percent of the RIGWA tax proceeds and 4.8 percent of the Metalliferous License Mine Tax. The revenues are used to fund natural resource agency

projects and administration including Department of Natural Resources and Conservation, State Library, Reserved Water Right Compact Commission, Department of Environmental Quality, and the Environmental Quality Council.

13. The **Hazardous Waste CERCLA Account** is administered by the Department of Environmental Quality (CERCLA stands for the federal Comprehensive Environmental Response, Compensation, and Liability Act). This account receives 18 percent of the remaining RIT trust interest earnings. The account was established in 1983 and is to be used to make payments on CERCLA bonds, implementation of the Montana Hazardous Waste Act, and to provide assistance in remedial action under CERCLA.

14. The **Environmental Quality Protection Fund** was established in 1985 and is administered by the Department Environmental Quality. This account receives 6 percent of the remaining RIT trust interest earnings. The purpose of this account is to provide funding for remedial actions taken by the department in response to a release of hazardous or deleterious substances.

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Attachment C

Last session proved how hard monitoring appropriations from the varied accounts crossing appropriations lines can be. The following options suggest administrative changes for enhance the legislature's ability to monitor funds during the legislative session.

Option 1 Periodic meetings among chairpersons whose subcommittees appropriate RRGL and RDG funds could help prioritize the uses and ensure that appropriations do not exceed anticipated revenues. Staff would present updates of the projected ending fund balances based on subcommittee action and the potential impacts of legislation that might be proposed to re-allocate revenues, providing the chairpersons with up to date information on which to base further potential action.

Option 2 A joint meeting of all appropriations subcommittees that review RRGL and RDG RIT funded programs could be held for the sole purpose of prioritizing the uses of these funds. However, this option may be somewhat unmanageable given the number of subcommittees involved.

Option 3 Prioritization could wait until the House Appropriations committee meets to consider the general appropriations act. Staff could update the committee on the RRGL and RDG projected ending fund balances and the various uses could be debated at that time. This same approach would continue in the House, the Senate Finance and Claims committee, the Senate, and the Free Conference committee if a shortfall still exists. This is essentially what was done in the last session.